

Message Text

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OPIC-03 SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 AGRE-00

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PASS: EB FOR PREEG, TREASURY FOR NIEHUSS, COMMERCE FOR
ARRILL, CIEP FOR GRANFIELD

E.O.11652: N/A

TAGS: EINV' EFIN, OECD

SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTI-
NATIONAL ENTERPRISES (CIME) MEETING NOVEMBER 9-10, 1976

REFS: (A) OECD PARIS 29713, (B) IME(76)18, (C) IME(76)19,
(D) IME(76)25 AND ADDENDUM, (E) IME(76)16/SERIES,
(F) IME(76)17, (G) IME(76)22, (H) IME(76)24,
(I) STATE 271407, (J) STATE 226141

1. SUMMARY: IN BUSINESS-LIKE FASHION, OECD INVESTMENT
COMMITTEE (CIME) ON NOVEMBER 9-10 CONDUCTED ITS FIRST
PLENARY SESSION SINCE OECD MINISTERS AGREED TO INVEST-
MENT PACKAGE LAST JUNE. CIME ELECTED NEW CHAIRMAN
(ABRAMOWSKI). COMMITTEE APPROVED (FOR SUBMISSION TO
COUNCIL) DRAFT TEXT OF THREE-YEAR MANDATE WHICH INCLUDES
PROVISIONS FOR IMPLEMENTING MINISTERIAL PACKAGE OF LAST
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JUNE, CLEAR MANDATE FOR OECD COUNTRIES TO CAUCUS AND

DEVELOP VIEWS ON NEGOTIATIONS IN OTHER FORUMS AND A STRONG INCENTIVE TO COORDINATE AND GIVE DIRECTION TO INVESTMENT WORK PROGRAMS SCATTERED ELSEWHERE IN THE OECD. COMMITTEE AGREED THAT FIRST FORMAL REVIEW OF EXPERIENCE UNDER MNE GUIDELINES SHOULD TAKE PLACE TOWARD END 1977, ALTHOUGH PRELIMINARY EXCHANGE OF VIEWS, PRECEDED BY BIAC AND TUAC PRESENTATIONS, WILL TAKE PLACE MARCH 30-APRIL 1. SUBSTANTIVE EXCHANGE OF VIEWS ON UPCOMING UN ECOSOC TNE CODE NEGOTIATIONS INDICATED BROAD SUPPORT THAT SUCH A CODE SHOULD BE VOLUNTARY AND GENERAL IN NATURE, APPLY TO PRIVATE AND PUBLIC FIRMS, AND INCLUDE BALANCING COMMITMENTS BY GOVERNMENTS. NEED GENERALLY RECOGNIZED FOR CLOSE CONSULTATION AMONG ALL OECD COUNTRIES ON THIS MATTER, AND (SURPRISINGLY) AT SWEDISH AND FRENCH INITIATIVE, MID-FEBRUARY MEETING OF CIME WAS AGREED, PRIMARILY FOR PURPOSE OF HOLDING A DETAILED SUBSTANTIVE EXCHANGE OF VIEWS ON UN CODE EXERCISE. CIME DISCUSSION OF NATIONAL TREATMENT PROVISIONS OF MINISTERIAL DECISION AND OF APPROACH FOR ACHIEVING EFFECTIVE COORDINATION OF WORK PROGRAMS OF OTHER OECD BODIES WAS LIMITED TO PROCEDURAL MATTERS AND TO TASKING SECRETARIAT WITH WORK OVER COMING MONTHS HELPFUL TO HAVING FULL SUBSTANTIVE EXCHANGE ON THESE SUBJECTS AT FEBRUARY AND LATE MARCH CIME MEETINGS. END SUMMARY.

2. ELECTION OF CHAIRMAN: NEW CHAIRMAN (ABRAMOWSKI-FRG) TOOK OVER AT BEGINNING OF SESSION FROM VICE-CHAIRMAN (NIKLASSON-SWEDEN), AS WORKED OUT IN ADVANCE. SUPPORT WAS UNANIMOUS, ALTHOUGH CANADIAN DEL EXPRESSED HOPE THAT CIME COULD LOOK SERIOUSLY AT CHAIRMANSHIP QUESTION AGAIN AFTER TWO YEARS.

3. CIME MANDATE: MOST DELEGATIONS, INCLUDING U.S. DEL (PREG), SUPPORTED GENERAL APPROACH OF SECRETARIAT (REFDOC B). THERE WAS AGREEMENT THAT CIME SHOULD HAVE "TASK OF DEVELOPING AND STRENGTHENING COOPERATION AMONG MEMBER COUNTRIES IN FIELD OF INTERNATIONAL INVESTMENT AND MNE'S." HOWEVER, TO AVOID POSSIBLE JURISDICTIONAL PROBLEMS AND TO RECOGNIZE SUPREMACY OF COUNCIL'S ROLE' LANGUAGE OF MANDATE ON CIME ROLE IN COORDINATING AND LIMITED OFFICIAL USE

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PROMOTING ACTIVITIES OF OECD SPECIALIZED COMMITTEES WAS SOMEWHAT SOFTENED. AT SAME TIME, LANGUAGE FROM EARLIER CIME MANDATE WAS ADDED TO INDICATE THAT OTHER OECD COMMITTEES CONCERNED "WILL REPORT TO THE COUNCIL THROUGH CIME ON THE PROGRESS OF THEIR WORK" IN THIS FIELD. RE MANDATE FOR CIME ACTIVITIES VIS-A-VIS OTHER INTERNATIONAL FORUMS, SECRETARIAT DRAFT WAS CHANGED TO REFLECT POINTS THAT CIME SHOULD SERVE AS A FORUM FOR EXCHANGES OF VIEWS

ON ISSUES RAISED IN OTHER INTERNATIONAL BODIES AND THAT
THESE VIEWS SHOULD BE "DEVELOPED FURTHER" AS APPROPRIATE.
CANADIAN AND SWEDISH DELS, HOWEVER, RESISTED USE OF PHRASE
"MAY HARMONIZE VIEWS" AS IN SECRETARIAT NOTE. WHILE
SECRETARIAT DRAFT SUGGESTED FIVE-YEAR PERIOD ON TERMS
OF REFERENCE, CIME AGREED TO LIMIT IT TO THREE YEARS TO
COINCIDE APPROXIMATELY WITH THE THREE-YEAR REVIEW PERIOD
FOR THE OECD INVESTMENT PACKAGE ITSELF. SWISS SUGGESTED

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ADDING PARAGRAPH TO MANDATE WHICH WOULD SPECIFY HOLDING
EXCHANGES OF VIEWS ON GENERAL FIELD OF INTERNATIONAL
DIRECT INVESTMENT (AS IN EARLY CIME MEETINGS ON OPEC
INVESTMENT). SECRETARIAT RESPONDED THAT THIS POINT
WOULD BE UNDERSTOOD IN FIRST GENERAL PARAGRAPH OF MAN-
DATE, AND COULD BE SPELLED OUT IN EXPLANATORY NOTE. FULL
TEXT OF DRAFT MANDATE (WHICH IS SUBJECT TO FINAL APPROVAL
BY THE COUNCIL) BEING TRANSMITTED SEPTTEL.

4. IMPLEMENTATION OF MNE GUIDELINES: AFTERNOON OF FIRST DAY DEVOTED TO DISCUSSION OF FUTURE WORK OF CIME (REFDOC C), PRIMARILY ON IMPLEMENTATION OF MNE GUIDELINES. CONSENSUS SOON EMERGED THAT NOT SENSIBLE TO HOLD FIRST FORMAL REVIEW OF EXPERIENCE UNDER GUIDELINES UNTIL AT LEAST ONE YEAR HAD ELAPSED, AND IT WAS AGREED THAT THIS REVIEW SHOULD TAKE PLACE DURING LATTER PART 1977. HOWEVER, IN VIEW DESIRABILITY OF MAINTAINING MOMENTUM OF MINISTERIAL DECISIONS, AND TO BE RESPONSIVE TO REQUEST LIMITED OFFICIAL USE

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BY TUAC (COPY OF WHICH HAND-CARRIED TO WASHINGTON FOR INTERESTED PARTIES BY U.S. DEL) FOR EARLY PRESENTATION OF ITS POSITIONS, IT WAS ALSO AGREED THAT THERE WOULD BE A PRELIMINARY EXCHANGE OF VIEWS ON EXPERIENCE OF GUIDELINES AT CIME MEETING TENTATIVELY SET FOR MARCH 31-APRIL 1. THIS WOULD BE PRECEDED BY AN INFORMAL MEETING WITH BIAC AND TUAC (SEPARATELY) ON MARCH 30. FORMAT WOULD BE SIMILAR TO 1975 BIAC/TUAC-CIME MEETING; I.E., IT WOULD BE FULL CIME PLENARY, ALTHOUGH EMPHASIS WOULD BE ON INTERESTED DELEGATIONS AND ATTENDANCE BY OTHERS WOULD NOT BE MANDATORY.

5. U.S. DEL, CONSISTENT WITH OUR APPROACH OF MAINTAINING THE INTEGRITY OF THE INVESTMENT PACKAGE, STRONGLY SUPPORTED STANCE ULTIMATELY ADOPTED BY CIME OF POSTPONING THE DECISION ON CREATION OF ANY TECHNICAL CIME SUBGROUPS. ON POTENTIALLY DIFFICULT ISSUE OF HOW CIME SHOULD HANDLE QUESTION OF WHETHER INDIVIDUAL CASES SHOULD BE DISCUSSED AND WHETHER SPECIFIC ENTERPRISES SHOULD BE GIVEN OPPORTUNITY TO EXPRESS THEIR VIEWS, THERE WAS ONLY CURSORY DISCUSSION. RATHER, CIME AGREED THAT THIS ISSUE WOULD BE ADDRESSED ON A CASE-BY-CASE BASIS WHEN IT ARISES. AS FOR CONSULTATIONS IN SITUATIONS WHERE MNE'S MIGHT BE SUBJECT TO CONFLICTING REQUIREMENTS, IT WAS AGREED TO LEAVE THIS TO BE HANDLED PRIMARILY ON A BILATERAL BASIS FOR TIME BEING. IT WAS RECOGNIZED THAT CASES MIGHT ARISE WHERE A MULTILATERAL EXCHANGE WOULD BE USEFUL, AND THAT, IN ANY CASE, SOME EFFORT SHOULD BE MADE TO PROVIDE THE CIME WITH INFORMATION ON CASES THAT HAVE BEEN RESOLVED BILATERALLY.

6. MEASURES UNDERTAKEN BY GOVERNMENTS TO PROMOTE THE MNE GUIDELINES: U.S. DEL CIRCULATED DETAILED WRITTEN REPORT PRIOR TO THIS CIME MEETING; IT INCLUDED BRIEF REPORT ON U.S. ACTIVITIES, COPIES OF SENATE RESOLUTION 516, AND OF LETTER CO-SIGNED BY SECRETARIES KISSINGER, SIMON AND RICHARDSON (REFTELS I AND J). U.K. MADE SIMILAR WRITTEN REPORT. CIME AGREED TO REQUEST WRITTEN SUBMISSION FROM ALL MEMBER GOVERNMENTS BY DECEMBER 1,

AFTER WHICH SECRETARIAT WOULD CIRCULATE CONSOLIDATED
DOCUMENT COVERING ALL OECD COUNTRIES.

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7. UN CODE OF CONDUCT FOR TNC'S: USEFUL EXCHANGE OF
VIEW TOOK PLACE ON BASIC OBJECTIVES FOR UN CODE EXERCISE
BEGINNING IN NEW YORK IN JANUARY. U.S., U.K., FRG, AND
SWISS DELS AGREED ON BASIC OBJECTIVES THAT CODE SHOULD
BE NON-BINDING IN CHARACTER, SHOULD INCLUDE GOVERNMENT
RESPONSIBILITIES AS WELL AS CORPORATE GUIDELINES, AND
SHOULD COVER BOTH PRIVATE AND STATE-OWNED ENTERPRISES.
NO DELS DISAGREED WITH THIS VIEW, ALTHOUGH THERE WAS
RECOGNITION THAT LARGE GAPS EXISTED BETWEEN OECD AND LDC
POSITIONS. SWEDISH DEL NOTED THAT TIMETABLE FOR UN
EXERCISE WAS UNREALISTIC, AND WOULD PROBABLY TAKE MUCH
LONGER THAN YEAR-AND-A-HALF CURRENTLY SCHEDULED. MORE-
OVER, HE NOTED THAT IN HIS CONTACTS WITH G-77 REPS THERE
WAS GROWING FEELING ON THEIR SIDE THAT BROAD PRINCIPLES
MAY IN FACT HAVE TO BE VOLUNTARY IN NATURE, AND THAT
PERHAPS SOME FORM OF SECTORAL AGREEMENTS OF A MORE SPECI-
FIC NATURE SHOULD EVOLVE OUT OF BASIC CODE EXERCISE.
OTHER ISSUES DISCUSSED BY CIME INCLUDED GEOGRAPHIC
COVERAGE OF CODE, TACTICAL AS WELL AS SUBSTANTIVE RELA-
TIONSHIP OF OECD GUIDELINES TO OUTCOME OF UN TNC EXER-
CISE, AND RELATIONSHIP OF UN CODE TO UNCTAD TECHNOLOGY
CODE NEGOTIATION. THERE WAS SURPRISINGLY BROAD AGREEMENT
THAT CONTINUING EXCHANGES OF VIEW ON THIS SUBJECT SHOULD
TAKE PLACE WITHIN CIME. SWISS PRESSED FOR EARLY

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EXCHANGE, SINCE IT DOES NOT PARTICIPATE IN UN EXERCISE. AT SWEDISH AND FRENCH INITIATIVE, IT WAS THEN AGREED TO HAVE THE NEXT ROUND OF DISCUSSION ON THIS SUBJECT IN MID-FEBRUARY OR SHORTLY BEFORE THE FIRST SUBSTANTIVE EXCHANGES AT THE UN (SEE PARA 13 BELOW). ALTHOUGH U.S. AND ONE OR TWO OTHERS HAD DOUBTS ABOUT NEED FOR MEETING AS EARLY AS FEBRUARY, WE SUPPORTED MAJORITY VIEW PARTICULARLY IN VIEW OF ITS SPONSORSHIP. (I.E., SWEDEN AND FRANCE ARE OFTEN THE MOST RELUCTANT TO PURSUE CLOSE OECD CONSULTATIONS.)

8. COORDINATION OF OTHER OECD WORK ON INVESTMENT: ALL DELS AGREED CIME HAS IMPORTANT ROLE IN COORDINATING AND GIVING DIRECTION TO WORK IN THE OTHER SPECIALIZED COMMITTEES OF THE OECD. CHAIRMAN INDICATED DESIRABILITY OF DEVELOPING PRIORITIES. SECRETARIAT (BERTRAND) NOTED THAT COORDINATION CAN BE FACILITATED BY CLOSE CONTACTS AMONG CIME CHAIRMAN AND CHAIRMEN OF THE SPECIALIZED LIMITED OFFICIAL USE

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COMMITTEES. CIME AGREED TO ASK SECRETARIAT FOR MORE FOCUSED (THAN REFDOC C ANNEX) DESCRIPTIVE REPORT ON STATE OF ACTIVITIES IN SPECIALIZED COMMITTEES, AND INCLUDE IN THAT REPORT QUESTIONS WHICH WOULD HELP CIME GIVE GUIDANCE ON WORK PROGRAMS OF THESE COMMITTEES. THIS PAPER WOULD SERVE AS A BASIS FOR FURTHER DISCUSSION IN CIME ON ORGANIZATION OF FUTURE WORK PROGRAM AT ITS FEBRUARY MEETING. SWEDISH DEL AND SECRETARIAT (VOGELAAR) SUGGESTED THAT THIS WORK COULD FOCUS, FOR EXAMPLE, ON INDUSTRY COMMITTEE DOCUMENT (IME(76)20) ON PUBLICATION OF INFORMATION BY ENTERPRISES AND HOW INDUSTRY COMMITTEE'S WORK MIGHT BE MADE RELEVANT TO DISCLOSURE OF INFORMATION REQUIREMENTS OF OECD GUIDELINES. U.S. DEL (PREEG),

SUPPORTED BY FRG AND OTHERS, INDICATED THAT THIS WOULD BE IMPROPER COURSE TO PURSUE AT THIS STAGE; RATHER, THE CIME REVIEW OF WORK OF OTHER SPECIALIZED COMMITTEE ACTIVITIES SHOULD BE MUCH MORE BROADLY BASED AND SECRETARIAT PREPARATION SHOULD NOT PREJUDGE SUBSTANTIVE ISSUES THAT MIGHT ARISE. SECRETARIAT ASSURED COMMITTEE THAT ITS WORK WOULD BE NEUTRAL AND OBJECTIVE, BUT SWEDISH DEL HAS PUT U.S. ON NOTICE WE SHOULD ANTICIPATE LIVELY EXCHANGE AT FEBRUARY MEETING ON QUESTION OF INFORMATION REQUIREMENTS.

9. NATIONAL TREATMENT: SECRETARIAT NOTED THAT TWELVE COUNTRY NOTIFICATIONS OF EXCEPTIONS TO NATIONAL TREATMENT RECEIVED THUS FAR. SEVERAL DELS PROMISED SUBMISSIONS SHORTLY, AND CHAIRMAN URGED ALL TO COMPLY BY DECEMBER 1. SECRETARIAT RE-EMPHASIZED THAT STANDARD FORMAT SHOULD BE FOLLOWED. THOSE COUNTRIES WHO HAVE NOT YET SUBMITTED NOTIFICATIONS WERE REQUESTED TO USE THIS FORMAT AND OTHERS TO RE-WORK THEIR SUBMISSIONS AS APPROPRIATE. MOST SIGNIFICANT DISCUSSION WAS ON DESIRE TO ENSURE CONSISTENCY OF SUBSTANCE AMONG COUNTRY NOTIFICATIONS. FRG ECHOED POINTS MADE BY U.S. THAT NOTIFICATIONS RECEIVED TO DATE REFLECTED DIFFERENCES IN INTERPRETATION OF NATIONAL TREATMENT PRINCIPLE, AND SUGGESTED POSSIBLE NEED FOR EXPERTS GROUP TO DEVELOP GREATER COMPARABILITY. AFTER FURTHER DISCUSSION, COMMITTEE AGREED THAT: (A) ALL COUNTRIES WILL SUBMIT NOTIFICATIONS PRIOR TO DECEMBER 1; (B) SECRETARIAT WILL ANALYZE LIMITED OFFICIAL USE

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SUBMISSIONS AND CONTACT COUNTRIES ON BILATERAL BASIS TO CLARIFY QUESTIONS THAT MAY ARISE, AND (C) CIME AT MEETING EARLY NEXT YEAR (PROBABLY MARCH MEETING) WILL REVIEW RESULTS OF ANALYSIS AND DECIDE ON FURTHER STEPS TO IMPLEMENT MINISTERIAL DECISION. IT WAS FURTHER AGREED THAT FORMAL REVIEWS OF NATIONAL TREATMENT WOULD BE ANNUAL, AND FIRST REVIEW WOULD TAKE PLACE IN LATTER PART OF 1977.

10. INCENTIVES/DISINCENTIVES: NO FUTURE WORK PROGRAM FOR CIME WAS DETERMINED FOR THIS AREA. IT WAS AGREED THAT PROCEDURES WOULD BE CONSIDERED FOLLOWING INDIVIDUAL REQUESTS FOR CONSULTATIONS, AS AND WHEN THEY ARISE.

11. REPORTS OF OTHER OECD COMMITTEES: THERE WAS NO COMMENT ON REPORT OF INDUSTRY COMMITTEE WP-1 ON PUBLICATION OF INFORMATION BY ENTERPRISES (IND(76)2). SINCE THIS REPORT NOT SCHEDULED TO BE TRANSMITTED TO COUNCIL FOR SOME TIME, CIME ACTION DEFERRED UNTIL NEXT MEETING. RE REPORT OF AD HOC WORKING PARTY ON ROLE OF MULTINATIONAL ENTERPRISES WITH RESPECT TO SHORT-TERM CAPITAL

MOVEMENTS (IME(76)21), SWISS DEL QUESTIONED LACK OF
REFERENCE IN DRAFT COUNCIL RESOLUTION TO LOCUS OF RES-
PONSIBILITY IN OECD FOR INITIATING ANY POSSIBLE FURTHER
WORK IN THIS AREA. HE SUGGESTED RECOGNITION OF CIME

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ROLE TO CONSIDER ADDITIONAL WORK IF NEEDED IN DUE COURSE.
SWEDISH DEL THEN WENT STEP FURTHER BY EXPRESSING DIS-
APPOINTMENT AT CONCLUSION OF AD HOC WORKING PARTY THAT
IT SHOULD BE DISSOLVED. THE PROPOSED AMENDMENTS TO
DRAFT RESOLUTION INDICATE CIME VIEW THAT ISSUE IS
IMPORTANT AND MERITS FURTHER STUDY. U.S., FRG, AND
AUSTRALIA OPPOSED THIS, AND NOTED THAT DRAFT RESOLUTION
LEFT OPEN POSSIBILITY OF FUTURE WORK WITHIN OECD IF
NEEDED. COMMITTEE EVENTUALLY REACHED CONSENSUS ON
LANGUAGE WHICH INDICATES THAT IF CIME FEELS FURTHER WORK
BY EXPERTS "IN THIS IMPORTANT AREA OF SHORT-TERM CAPITAL
FLOWS" IS NEED, IT WILL CALL FOR SUCH WORK. IT WAS

NOTED THAT SUCH A DECISION WOULD BE BY CONSENSUS.

12. RELATED WORK IN OTHER INTERNATIONAL BODIES: CIME
DISCUSSED BRIEFLY DEVELOPMENTS IN COUNCIL OF EUROPE AND
ILO (REFDOCS F AND I) WITH RESPECT TO INTERNATIONAL
INVESTMENT AND MNE'S. U.S. DEL POINTED OUT THAT SECRE-
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TARIAT'S REPORT ON COUNCIL OF EUROPE REACTIONS HAD
UNFORTUNATE TILT REGARDING FUTURE CHANGES IN GUIDELINES.
SECRETARIAT DISAGREED, BUT GOT OUR MESSAGE CLEARLY. NOR-
WEGIAN DEL DESCRIBED BRIEFLY ACTIVITIES OF NORDIC
COUNCIL IN THIS FIELD (WITH A HOPE OF COMPLETING ITS OWN
MNE STUDY BY 1978).

13. SCHEDULE OF FUTURE MEETINGS: NEXT CIME MEETING
TENTATIVELY SCHEDULED FEBRUARY 14-15, 1977 WITH DISCUS-
SION OF UN TNC EXERCISE, COORDINATION OF OTHER OECD
GROUPS' WORK ON MNE ISSUES, AND POSSIBLY NATIONAL TREAT-
MENT ON AGENDA. SECOND CIME MEETING AGREED FOR MARCH 31-
APRIL 1 WITH AGENDA CONSISTING OF PRELIMINARY EXCHANGE
OF VIEWS ON EXPERIENCE WITH MNE GUIDELINES AND DISCUSSION
OF NEXT STEPS ON NATIONAL TREATMENT. THIS MEETING WILL
BE PRECEDED BY AD HOC SEPARATE MEETINGS WITH BIAC AND
TUAC ON MARCH 30.
TURNER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MEETING REPORTS, REGIONAL ORGANIZATIONS, COMMITTEE MEETINGS, FOREIGN INVESTMENTS, MULTINATIONAL CORPORATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 12 NOV 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976OECDP33687
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760424-0029
From: OECD PARIS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761154/aaaabufe.tel
Line Count: 469
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 9
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 OECD PARIS 29713
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 26 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <26 APR 2004 by hartledg>; APPROVED <14 SEP 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTI- NATIONAL ENTERPRISES (CIME) MEETING NOVEMBER 9-10, 1976
TAGS: EINV, EFIN, OECD
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006